



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/171366

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 23, 2016, at Janesville, Wisconsin.

The issue for determination is whether petitioner met his burden to support the need for additional time to the modified PA request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Linda Ehret
2727 S Kemp Rd
Avalon, WI 53505

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], RN, BSN (in writing)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Rock County.

2. Petitioner's provider Accura Home Health submitted on 11/19/15 a request for prior authorization for personal care services.
3. The PA request [REDACTED] requested 43.75 hours per week of PCW services.
4. After review by the Department, the Department modified the PA approving 28.5 hours per week. The areas modified by the Department were: dressing (Department granted 70 minutes per week), eating assistance (Department granted 0 minutes per week), mobility (Department granted 0 minutes per week), and delegated nursing tasks (Department granted 0 minutes per week).
5. Petitioner appealed.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only the following:

- 1. Assistance with bathing;*
- 2. Assistance with getting in and out of bed;*
- 3. Teeth, mouth, denture and hair care;*
- 4. Assistance with mobility and ambulation including use of walker, cane or crutches;*
- 5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;*
- 6. Skin care excluding wound care;*
- 7. Care of eyeglasses and hearing aids;*
- 8. Assistance with dressing and undressing;*
- 9. Toileting, including use and care of bedpan, urinal, commode or toilet;*
- 10. Light cleaning in essential areas of the home used during personal care service activities;*
- 11. Meal preparation, food purchasing and meal serving;*
- 12. Simple transfers including bed to chair or wheelchair and reverse; and*
- 13. Accompanying the recipient to obtain medical diagnosis and treatment.*

Wis. Admin. Code § DHS 107.112(1)(b).

It is petitioner's burden to establish the necessity of the requested time. Prior to hearing, the Department submitted a written explanation of its modification of the request. The Department explained that it reduced four areas of the requested services. First, it reduced the amount of time requested for dressing assistance to 70 minutes per week. The Department explained that one episode of dressing is included in the 210 minutes per week granted for bathing. The Department allowed one additional episode of dressing per day which amounts to ten minutes per day or 70 minutes per week. At hearing, the petitioner did not raise this as an issue or argue that the reduction was inappropriate. I find that argument conceded.

Second, the Department reduced to zero the amount of time granted for eating assistance. The Department argued in its written submission that it would not allow time for eating assistance or meal setup to avoid choking as requested because petitioner and petitioner's records did not demonstrate any recent history of choking. The Department notes that the Plan of Care indicates no choking incidents during the prior certification period. The Department explained that if there is an incident or development of issues indicating choking hazard that the petitioner could file a PA amendment supporting the request for additional time. At hearing, petitioner's representative testified that Accura would be filing an amendment given that Accura now has an understanding of what support needs to be provided to the Department. Petitioner did not argue this issue and I find the issue to have been conceded by petitioner.

Third, the Department reduced mobility assistance to zero minutes. The Department explained that the PCST indicated that the level of assistance required is "constant assistance and physical intervention to ensure task completion." It explained that this is only appropriate, however, "if the member cannot perform the activity without continuous direction from the PCW *and* if PCW intervenes to ensure safety. The PCW must be actively involved in *directing* the member during the task *a physically participate* in one or more steps. Watching the member without physical intervention is not constant supervision." (See ex. #2 at P. 6). The Department noted that the only description of the needs of petitioner provided on the PCST indicated that petitioner "ambulates with [stand-by assistance] to hands on assist. He holds on to counters for balance and uses a walker to go from home to the bus. He will often "scoot" across the floor instead of walking." The Department argued that this descriptive language supports a need for stand-by assistance but not constant supervision.

At hearing, the Accura representative did not specify a number of minutes that she believes petitioner needs for mobility. Petitioner's caregiver did not specify how much time she was requesting for mobility, only stating "whatever the state grants for that." I note that the PC Activity Time Allocation Table (see ex. #2) allows 20 minutes per day at seven days per week. This totals 140 minutes per week. I will allow this additional time because I am persuaded that the mobility assists are largely a hands-on task for petitioner regardless of what the Accura representative wrote in the comments section of the PCST. The Plan of treatment indicates "ambulation assist" as required and includes "ambulation" as a specified functional limitation. She explained that his mother uses a gait belt when petitioner ambulates and his sister can manage him by merely holding on to him. The record does not indicate that he is independent.

Finally, the Department allowed zero minutes for delegated nursing tasks. Specifically, the Department did not allow the time requested for skin care because it stated that no MD order was included on the plan of treatment. The Accura representative stated that the MD order was indeed present. I note that the Plan of Treatment includes a provision that states "Baza cream topical to reddened skin." The Time Allocation Table allows for 2 treatments per day at 5 minutes per day and 7 days per week. This totals 70 additional minutes per week. I will allow this based on this record.

I note to the petitioner that his provider will not receive a copy of this Decision. In order to have the claim approved, the petitioner must provide a copy of this Decision to the provider. The provider must then submit a billing statement with a copy of this Decision to receive the approved coverage.

CONCLUSIONS OF LAW

1. Petitioner's allocation for mobility should be approved at 140 minutes (35 units) per week.
2. Petitioner's allocation for skin care should be approved at 70 minutes (17.5 units) per week.
3. These are the only two areas which petitioner met his burden to support the request for additional time over what was approved.

THEREFORE, it is

ORDERED

That the petitioner's provider, Accura Home Health, is authorized to provide to the petitioner an additional 210 minutes (52.5 units) of PCW cares per week for mobility and skin care as originally requested, and submit its billing statement to the Department's fiscal agent, Forward Health which is directed to pay the claim. A copy of this decision should accompany that statement.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

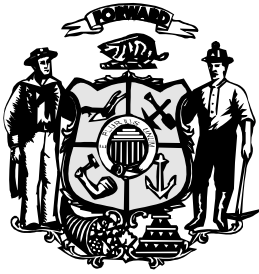
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of March, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 17, 2016.

Division of Health Care Access and Accountability

